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READ

THE PROPOSED AMENDMENT TO THE BY-LAWS ON JUDICIAL CANDIDATES AND CAMPAIGNS ON PAGES 155 TO 158, AND THEN ATTEND THE MEETING ON JANUARY 28, AT ALEXANDRIA HOTEL, AND HEAR THE DISCUSSION THEREON.

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Tia Juana Marriages and Reno Divorces

By Leon R. Yankwich, Judge of the Superior Court, Los Angeles County

Old-fashioned marriages may have been "made in Heaven." But some of the modern ones in Los Angeles, especially since the enactment, in California, of the three-day declaration of intention law, are being made in Tia Juana, Baja California, and other Mexican resorts. Heaven is less to blame for some of these marriages than the liquor consumed by the participants shortly before. In many instances, the awakening of "the morning after" has meant a speedy return to Los Angeles and as speedy an application for annulment. So numerous have the applications for annulment become lately that the question is being asked by many unfamilar with the law of marriage and divorce: By what right can California courts annul valid Mexican marriages? The answer is that neither the courts of California nor any other courts in Christendom can annul a valid marriage, whether contracted in Mexico or elsewhere. This, for the reason that it is an axiom of the law,—observed the world over,—that a marriage valid where entered into is valid everywhere. The only exception to this rule exists in the case of marriages repugnant to the public policy of the state where the parties come to reside, with respect to polygamy, incest, miscegenation and the like. The rule carries with it the corollary that such marriage,—as said in a Wisconsin case,—"comes into a sister jurisdiction with all its inherent infirmities as well as strength. It can acquire no greater sanctity or impregnability by such removal than it had where solemnized." (*Kitzman* v. *Werner,* 167 Wis. 308, 166 N.W. 789.) The reason behind the rule, as said in an old English case, is "the infinite mischief and confusion that must necessarily arise with respect to legitimacy, successions, and other rights, if the respective laws of different countries were only to be observed as to the marriages contracted by the subjects of those countries abroad." (*Scrimshire* v. *Scrimshire,* 161 Reprint 782).

Marriage by Proxy

A federal case,—the facts in which have an angle which may seem odd,—illustrates the strictness with which the rule which recognizes as valid marriages which are such by the law of the place of solemnization is observed. (*Ex Parte Suzanna,* 295 Fed. 713). A Portuguese, naturalized in the United States,—Manuel Gomez,—without leaving the United States, was married in Portugal, by *proxy,* to a Portuguese woman, Sabina Suzanna. The woman then sought admission to the United States, as a non-quota immigrant,—the wife of a citizen. The immigration officers refused to recognize the proxy marriage and denied her admission. Upon the matter being carried to the United States court, it was held that, as Portugal, in common with other countries of Catholic tradition, allowed marriage by proxy, the marriage was valid and the woman entitled to entry into the United States.

Incidentally, some important historic personages were so wedded. In 1516, Vasco Nuñez de Balboa, discoverer of the Pacific, was married, while in Darien, to the daughter of the Royal Governor Pedrarias, who was in Spain. Queen Mary of England married Philip the Second of Spain before Bishop Gardiner, the Spanish King being represented at the ceremony by Count Egmont.

"If royalty," asked the judge who decided the Suzanna case, "could do it, why may not those of more common clay be allowed to follow their example?"

"Infirmities" of Mexican Marriages

So when our courts annul Mexican marriages they do not do so because of their invalidity *according to California law,* but because of their infirmity *according to Mexican law.* What are some of these infirmities? The marriageable age in Mexico is (generally, with possible variations in some states) sixteen for men and fourteen for women. But the consent of a parent, guardian or judge is necessary if either party is under twenty-one. The absence of such consent is called an *"impedimento"* (impediment), for which the marriage may be annulled. So California minors who have not the consent of their parents do not contract valid marriages by "eloping" to Tia Juana. Then there are in each Mexican state certain requirements as to the solemnization of marriage. Among them is the general requirement in the Mexican Civil Code (and like requirements in the codes of the various states) of witnesses who have known the parties for a definite length of time (three years under the Ley Sobre Relaciones Fa-

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THE BENCH AND BAR AT PLAY—CHRISTMAS JINX

A GREAT SUCCESS

"The greatest show ever," was the verdict of the some 800 judges, lawyers, lawyers' wives, and lawyers' best girls who attended the Bar Association "Christmas Jinx" at the Elks' Club. A two-hour show, chuck full of fun; clever skits, songs well sung by members of both bench and bar; music by the orchestra, and a well staged program that deserved all the cheers and laughter that greeted it. And real talent!

First, thanks and congratulations to the Jinx Committee, of which Walter Burke was the chairman. It developed and put on a show that will be a mark for future committees to shoot at. THE BULLETIN reporter finds it difficult to do justice to those who gave their time and talents to entertain their fellow members of the bar, without going down the line and naming every man in it. There were, of course, some particularly bright spots in the program that stood out above the others. There was the singing of Everett Mattoon, Phil Richards, Clement Nye and Judge Frank Collier. Not only can Judge Collier sing but he can act—and did.

Perhaps the greatest kick the crowd got was when Judge Yankwich came on as Mahatma Gandhi. His makeup was perfect, from face stain to safety-pin. And Judge McLucas was "Sunny" Jim even to the boots.

Joe Crider and Deacon Taggart as the end-men—and real "end-men" they were—furnished a lot of amusement. Milton Schwartz, as clerk of the court, played his part like a trooper, and George Stahlman showed that he can make a living as an eccentric dancer, if he chooses. Fancy our own Judge Nathaniel Conrey taking a role as a meek litigant beseeching the Master Calendar Court for an early trial, and you will appreciate the spirit of fun and good fellowship that ruled the actors and the audience in our most successful celebration to date.

miliares) and strict requirements as to performance of the ceremony. Upon receiving the formal declaration of the parties of their wish to be married, the judge must enter in the register a record stating, generally, the names, ages and place of birth of the parties, and of their parents, the consent of the parents, if either party is under age, whether there be any impediment or its dispensation, the declaration of the parties that they desire to be married, the judge's statement that they are married and the names, ages, and status of the witnesses. (*Codigo Civil de* 1844, arts. 109, 110, 159, 160-170,—*Wheless,* Compendium of the Laws of Mexico, vol. 1, pp. 71-76; *Codigo Civil del Estado de Puebla,* arts. 103, 104, 152-174; *Codigo Civil del Estado de Colima,* arts., 109, 110, 159, 160-170. As to similar provisions in the Federal Code of 1928, see article by *J. Castan Tobenas* in 1 Revista General de Derecho y Jurisprudencia (1930) pp. 60 *et seq.* Also, Ley sobre relaciones familiares (1917) as digested in (1931) 2 Martindale-Hubbel Law Directory.) Failure to comply with these requirements is made ground for annulment. (*Codigo Civil,* art. 257; (De los matrimonios nulos e ilicitos); *Wheless,* op. cit., pp. 92-93; *Codigo de Puebla,* art. 251; *Codigo de Colima,* art. 257.) The importance of compliance with the requirements as to witnesses lies in the fact that witnesses serve not only to confirm the *act* of solemnization. It must appear from their declarations that the applicants "may be married legally." This is what the Mexican Federal Civil Code calls *"la aptitud de los pretendientes"* (*Codigo Civil,* art. 110.)

In providing that the persons produce witnesses, the object is stated as "hacer constar su aptitud para contraer matrimonio conforme a la ley"—to verify their ability to contract marriage according to law. (*Codigo Civil,* art. 109)

Legal Impediments

How are these witnesses to know that there are no legal impediments to the marriage of the two persons, if they have not known them for a definite length of time,—but had just met them at "The American Bar"? When these infirmities have been called to the attention of California courts and they were shown that the law of the Mexican state where the marriage was solemnized contained restrictions like the ones just outlined, the marriages have been annulled. And this was done even though neither age nor the presence of other impediments would have been a ground for invalidating a marriage contracted in California.

But, you say, why bother about annulments when Nevada has just reduced the residence requirement for divorce to six weeks, adding open gambling as an inducement? And do not Yucatan and Paris also beckon? The answer is, that while we are required to recognize as valid a marriage which is such, where made, we are not bound,—even under the full faith and credit clause of the Constitution of the United States,—to recognize a Nevada, Yucatan or Paris divorce granted to a Californian who goes to Nevada, Yucatan or Paris for *no other purpose* than to secure the divorce. Lest this surprise, let me state the rule, the reason behind it and its limitations:

Both under international law,—and under the interpretation placed by the Supreme Court of California on the provisions for residence found in our statutes—the domicile of the married pair (the "matrimonial domicile," as it is called) affords the only true test of jurisdiction to dissolve their marriage. (*Le Mesurier* v. *Le Memesurier,* L.R.App. Cas. 517; *Bennett* v. *Bennett,* 28 Cal. 599; *Flynn* v. *Flynn,* 171 Cal. 746.) This, of course, is subject to the rule, that, for the purpose of an action for divorce, each of the spouses may have a separate domicile depending upon the proof of the fact and not upon legal presumptions: Civil Code, section 28. To effect a change of domicile, the *animus* or intent is as essential as the fact of residence. A mere change of the place of abode, however long continued, is not sufficient, unless the proper animus or intention is present: (Reed's Will, 48 Ore. 500; 87 Pac. 763.)

Where one spouse goes to a state other than that of the matrimonial domicile and there obtains a divorce under a residence simulated for that purpose and *not* in good faith, the judgment is not binding upon the courts of other states of the Union. Upon proof of fraudulent residence and of the fact that the divorce is obtained by substituted service only, it may be held to be void in any other state than that in which it was rendered. Whether it would be held valid in the state in which it was rendered is a question depending upon the policy and law of that state. (*Estate of James,* 99 Cal. 374; *Bruguire* v. *Bruguire,* 172 Cal. 199; *Haddock* v. *Haddock,* 201 U. S. 562; *Atherton* v. *Atherton,* 181 U. S. 155; *Bell*

v. *Bell*, 181 U. S. 175; *Andrews* v. *Andrews*, 188 U. S. 14; *Thompson* v. *Thompson*, 226 U. S. 551; *Galloway* v. *Galloway*, 66 C.A.D. 830.)

"Legal Domicile" and Residence Distinguished

As distinguished from legal domicile, mere residence of the plaintiff in an action for divorce is not sufficient to confer jurisdiction upon the court of such residence to dissolve the marriage relation between the plaintiff and a non-resident defendant.

The reason for these rules was well stated by *Lord Penzance* (in *Wilson* v. *Wilson*, L.R. 2 P. & D. 442):

> "Different communities have different views and laws respecting matrimonial obligations, and a different estimate of the causes which should justify divorce. It is both just and reasonable, therefore, that the differences of married people should be adjusted in accordance with the laws of the community to which they belong, and dealt with by the tribunals which alone can administer those laws."

Domicile implies more than mere residence. To acquire it, residence and intention to remain must concur. The *factum* (presence) and the *animus* (intention) must unite. Of course, this *does not mean* that a person can *never* acquire a *legal domicile* in another state. It merely means that if there be not, in the residence, the *animus manendi* (the intention to remain), the state of the matrimonial domicile *need not* recognize the decree, if it is attacked in its courts. So, if it should appear in a subsequent attack upon the decree that the residence in Reno, Yucatan or Paris began under circumstances which showed no reasons or inducements, — *personal, business, social, cultural* or other,—for establishing a permanent domicile therein,—that an action for divorce was instituted immediately after the expiration of the minimum residential requirement,—and that the recipient of the decree left immediately after it was signed, it would need no argument to convince a California court that the divorce was a fraud upon it. But, if a person should go to Reno, Yucatan or Paris in search of health, amusement, or for business or other purposes, and while there, long after the expiration of the minimum requirement, institute an action for divorce, his or her subsequent return to the state of the marital domicile would not, in itself, deprive the decree of validity. (See, *W. Turney Fox*, The Recognition of Foreign Decrees of Divorce, Bar Association Bulletin, vol. 2, No. 4, October 21, 1926).

So, the formula of marrying "in haste" in Tia Juana and "repenting" at Reno may not always work. The Tia Juana marriage *may be good*, and the Reno divorce *bad*.

THE MINNESOTA BAR AND RADIO BROADCASTS

The Minnesota Bar Association has undertaken a series of radio programs "for the purpose of aiding the Bar of Minnesota in developing a better relationship between the legal profession and the public." In response to the inquiry of THE BULLETIN as to the success of these programs, the Executive Secretary of the Association writes as follows:

> "In regard to our radio broadcasting programs I shall say that thus far they have proved very successful. The addresses so far have had to do with the administration of criminal justice. The County Attorney will give the side of the prosecutor, the public defender, the side of the criminal. The Judge of the Criminal Court will give the side of the court and the jury. One of our Supreme Court judges will discuss the criminal law from the standpoint of the Supreme Court.
>
> "This series of broadcasting will be followed by a discussion of the workings of the courts in civil matters. So far the discussions have been interesting and I think a great many people listen to them."

OFFICERS OF THE BEVERLY HILLS BAR ASSOCIATION

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What Every Lawyer Should Know

PROCEDURE BEFORE THE DIVISION OF CORPORATIONS. NEW RULES RELATING TO PERMITS AND LICENSES. JURISDICTION, FEES, COMPLAINTS, INVESTIGATION AND PROSECUTION

By C. T. Johnson, Assistant Commissioner, Division of Corporations

The Corporate Securities Act of the State of California authorizes the Commissioner to maintain offices at Sacramento, Los Angeles, San Francisco and San Diego. Since no office has been opened in San Diego, practically all of the business in the southern part of the state is handled before the Los Angeles office. The area covered includes the following counties: Inyo, Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura. Pending matters may be transferred from one office to another upon a sufficient showing of convenience to the applicant, counsel, or witnesses.

Since the creation of the State Corporation Department, now officially known as the Division of Corporations of the Department of Investment, a considerable body of procedural and substantive rules has been developed. Most of these rules have been embodied in a booklet issued by the Division under date of August 14, 1931, and available at any of the three offices, without charge. It should be stated that the large number of changes both in the Corporate Securities Act and corporation laws by the last legislature has resulted in modifications of some of the published rules. The rules relate chiefly to permits and licenses. (Rule No. 29 has recently been abrogated.)

In considering the subject of procedure before the Division of Corporations, it should be borne in mind that the jurisdiction of the Commissioner is not confined to the Corporate Securities Act, but includes as well the Industrial Loan Act, the Credit Union Act, the Bucket Shop Act, and the recently amended Personal Property Broker's Act. The rules of procedure are closely related with the substantive rules, and a discussion of the subject must necessarily contain some reference to the latter rules.

The functions of the Division may be generally divided into two branches, each of which is conducted along fairly definite procedural lines. As a consequence, the offices are divided into two departments which are generally known as the Regulatory and Fraud Departments.

The Regulatory Department is concerned with the examination and disposition of applications for permits, orders, licenses and certificates.

Applications for Permits

The preparation of applications for permits is covered by Section 3 of the Corporate Securities Act and by Rule No. 7 of the published rules. Due to the wide variety of questions presented by applications for permits, no forms are provided for such applications. The application ordinarily consists of a verified petition which should contain a statement of facts sufficiently complete to convey to the Commissioner an accurate picture of the project. It should conclude with a prayer describing the permit desired and should be accompanied by the statutory fee and exhibits. For convenience in filing, legal size paper is preferred, but not required. If the application is for an amended or supplemental permit, and the required exhibits have been filed with a previous application, the need not be duplicated. Any amendments to the articles of incorporation or by-laws, however, should be indicated by appropriate exhibits. Applications for extensions of termination dates must be filed on or before the expiration date of the permit involved, otherwise the full filing fee is payable as for a new permit. Such applications require a filing fee of $10.00, and should be accompanied by a balance sheet showing the company's present financial condition.

Should an application be incomplete or defective or reflect an unsatisfactory set-up, it is the practice for the deputy to whom the application has been assigned to notify the applicant or its counsel of any further or different showing that may be required. Applications for closed permits, that is, permits authorizing the issuance of securities to named persons, seldom encounter difficulty, except that property or services to be received in exchange for securities should be fully described and the value thereof substantiated. In applications for open or public sale permits, however, it is frequently necessary to adjust one or more points.

This can usually be accomplished by the submission of additional exhibits or by conferences. In some instances, however, a hearing may become necessary. Such hearings are informal in nature and are seldom subject to the usual rules of evidence. The substance of the hearing is ordinarily recorded in a memorandum prepared by the presiding deputy, although in some instances formal findings of fact and conclusions of law are filed. If the applicant should be dissatisfied with the decision of the deputy handling its application, the questions involved may be further taken up with his superiors. If the final decision of the Division is unsatisfactory to the applicant in whole or in part, a remedy by way of writ of review is provided in Section 15 of the Corporate Securities Act.

After receiving a permit, counsel should fully advise his clients as to the conditions or limitations contained in the permit. Any variation from the expressed terms of the permit may result in an illegal issuance of securities. Thus, when a permit authorizes the sale of stock for cash, the sale of such stock on installments, or for notes, in cancellation of indebtedness or in exchange for property or services, is not a compliance with the permit.

Strict Compliance Required

Likewise the failure to comply with conditions in permits may result in serious complications. A brief discussion of the most frequent conditions follows:

(*a*) The so-called true copy condition contained in open or public sale permits requires that a true copy of the permit be exhibited to each subscriber before the subscription is taken. It should be noted that this is in the form of a condition precedent, and that there is no authorization to make a sale until the condition has been met.

(*b*) The escrow condition requires the nomination by the applicant and the approval by the Commissioner of an escrow holder, prior to the issuance of the stock to be escrowed. As a general rule, individuals may be named as escrow holders only in small closed matters. There can be no transfer in escrow or release of shares from escrow without an express order from the Commissioner, issued pursuant to proper application. No fee is chargeable upon the filing of such an application.

(*c*) The impound condition requires the nomination by the applicant and approval by the Commissioner of a depositary to receive and hold the proceeds from the sale of securities until a certain minimum amount has been accumulated. This condition ordinarily requires impoundment only of the amount remaining after the payment of the authorized commission, but in some instances commissions are also included in the impound requirement. This condition also requires the approval by the Commissioner of subscription forms to be used in the sale of securities. Only trust companies or banks having trust powers will be approved as depositaries for the impoundment of funds.

(*d*) The condition requiring an agreement waiving assets upon liquidation or dissolution, until cash purchasers have received the return of the full amount of their investment, should be complied with before the issuance of the securities subjected thereto.

There are other conditions which are occasionally used, but which are not sufficiently uniform or important to be discussed here.

Fees and Bonds

The amended Corporate Securities Act requires a uniform fee of $25.00 on applications for approval for trading. The information required with such applications is set forth in Rule No. 23.

Brokers' applications should be filed on the forms provided for that purpose and should be accompanied by the uniform fee of $25.00. It is also necessary to file a surety bond in the penal sum of $5,000.00, as provided by the act. Applications for brokers' licenses for the year 1932 must be accompanied by certified audits showing the condition of the applicant at a date not earlier than October 31, 1931, unless the equivalent information is elsewhere available. Should the Division have an unfavorable record concerning any applicant, a hearing may be called for the purpose of determining whether the application should be granted or rejected.

Applications for agents' licenses are always predicated upon an outstanding broker's license or an outstanding permit. Forms for each type of application are provided by the Division. The statutory filing fee is $5.00, and no surety bond is required. Questions concerning the qualifications of the agent are handled in the same manner as brokers' applications.

Forms are also provided for the convenience of applicants for investment counsel

certificates. There is a filing fee of $25.00, and a surety bond is not necessary.

Applications for personal property brokers' licenses should be submitted on standard forms and should be prepared in compliance with the regulations of the Division set forth in Rule No. 22. A bond of $5,000.00 is required where the application covers only one location. If there are additional locations to be licensed, an additional bond or bonds may be required.

Investigations and Prosecutions

The second function of the Division deals with complaints, investigations and prosecutions, and is handled by the Fraud Department. Complaints frequently originate from facts disclosed by financial statements or in some cases by applications for permits. The majority of complaints, however, come from the public, and are received either by personal call, by letter, or by verified complaints, forms for which are available at the Los Angeles office.

Upon receipt of a complaint the usual procedure is to order an investigation for the purpose of determining whether any affirmative action should be taken by the Division of Corporations. The investigation may take the form of a certified audit or may be completed by conferences and interviews. Most investigations are conducted under the authority granted to the Commissioner by Section 23 of the Corporate Securities Act. If the complaint proves to be unfounded, or if the facts are insufficient to support any action by the Division, they are usually dismissed at this point. If a cause of action is indicated, the matter is then set for hearing in the nature of an order to show cause why the permit, license or certificate involved should not be suspended or revoked. All parties and witnesses are notified of the time and place of hearing, usually by registered mail. The Commissioner is authorized to issue subpoenas wherever necessary. In arranging for such hearing it is customary to designate as presiding officer a deputy who has had no direct contact with the matter under investigation, in order that an impartial decision may be had. The affirmative side may be presented by counsel for the complainant or by the deputy who has prepared the case for hearing. In presenting the evidence the Division attempts to conform to the ordinary rules of evidence, but in some cases a variation is necessary. The testimony is recorded in shorthand by a hearing reporter, and later reduced to transcript form. Hearings ordinarily terminate with the completion of the testimony, but counsel may be permitted to make oral arguments. In some instances, the matter may be submitted on briefs.

Hearings and Decision

If a complaint is dismissed at any time before submission either by the complainant or by the presiding deputy, a report of the hearing is ordinarily set forth in memorandum form by the presiding deputy. Otherwise, the decision of the Division is set forth in formal findings of fact and conclusions of law, to be filed with the transcript. Should the decision be unfavorable to the respondent, it is ordinarily followed by a suspension or revocation of a permit, license, or certificate, whichever is involved.

If an investigation reveals a violation of any of the acts under the administration of the Commissioner, the matters may be certified to the District Attorney of the county involved, in accordance with Section 20 of the Corporate Securities Act.

Permits and licenses are frequently suspended or revoked as the result of investigations or hearings. In many instances, however, it is possible for the applicant to rectify the irregularities or violations giving rise to such suspension or revocation. In such cases, the applicant may apply to have the order of suspension or revocation set aside.

Persons desiring to inspect any portion of the files of the Division should apply in person. The Corporate Securities Act authorizes the Commissioner to exhibit papers filed with him by applicants, unless in his opinion the welfare of the company involved requires such files to be withheld from public inspection. The confidential files, consisting of memoranda and reports prepared by the employees of the Division, are not open to public inspection.

Attorneys and applicants desiring information relating to procedure may obtain the same by letter, telephone or by personal call.

California Inheritance Taxation

GENERALLY MISUNDERSTOOD FEATURES EXPLAINED

By Vere Radir Norton, of the Los Angeles Bar

The subject of inheritance taxation is so technical that it is not within the scope of a short article to cover more than a few phases. This discussion seeks to state and explain some of the more generally misunderstood features.

There is general interest in finding ways and means of diminishing or eliminating taxes, with emphasis on income and death taxes. Much may be accomplished by careful analysis of investments and arrangements for division of property, in taking advantage of every equitable provision and deduction possible.

It is common to encounter the belief that there must exist methods of completely avoiding payment of inheritance taxes. It is an erroneous assumption, fathered by hope and nourished by faith. It is true that transfers of property are made, which are legally subject to some form of death taxes, but upon which no tax is ever levied. There are also many other undiscovered crimes. Analysis of any specific case would disclose that the perpetrator of the evasion had simply not been 'found out.'

A kindred impression is that if information concerning transfers is withheld from the government for a sufficient period of time, a statute of limitations will run against the government, and the persons liable for payment of tax be relieved of all strain. This is a vain hope, resulting only in the increase of penalties and chiding, painful both to pride and pocketbook.

Amongst methods in common use for the disposition of property, all perfectly legitimate as such, but which are erroneously supposed in some circles to avoid inheritance taxation, are the placing of property (1) in joint tenancy, (2) trusts, and (3) corporations.

Contemplation of Death

As a fundamental proposition, any transfer made without valuable or adequate consideration, in contemplation of death, or intended to take effect in possession or enjoyment at or after such death, is taxable. This is a very inclusive statement when it is understood that the phrase 'contemplation of death' refers to that 'contemplation' which actuates a man in making his will.

Joint Tenancies

Any and all transfers by a property holder during his lifetime, under or by which he retains any beneficial interest or power of direction, which interest devolves upon other persons upon his death, are taxable to the succeeding beneficiaries. Thus property placed in joint tenancy is taxable, at the death of one party, to the extent of the proportionate original contribution of the decedent. Property may be given by one person to another and held as the donee's separate property for years, but if subsequently placed in joint tenancy with the donor, it will be considered to be the contribution of that donor, and not of the donee.

Trusts

Property placed in trust, if done so in that 'contemplation of death' defined above, is taxable. The passing of property under trust agreements is very comfortable and convenient and is generally done entirely without intention of avoiding any sort of taxation. However, if this intention does happen to have a place in the mind of the Trustor, he is in error in considering that such result would ensue. Trustees are under obligation to consummate no transfers, after death, without obtaining proper releases from the taxing authorities.

Family Corporations

In the same category is the formation of family corporations. They are usually formed and carried on with the sole intention of handling large family assets in the most convenient manner possible. Many times actual, bona fide gifts of shares in the corporation are made by the head of the family and the fruits thereof enjoyed by the donees from the time of the making of the gifts. Such gifts, if they do not come under the 'contemplation of death' description, are not taxable upon the death of the donor. There is nothing in the Inheritance Tax Act which precludes anyone from making bona fide inter vivos gifts, which are entirely free from inheritance taxation. In all cases of

gift transfers it is the intention with which the gift is made which determines its status as being or not being subject to taxation. Such intention is to be proved as any other fact in a Court of law. Transfers made, without valuable or adequate consideration, which take effect at or after the death of a decedent, are taxable in any event.

There is, however, no denying that the formation of family corporations is popularly supposed, by many misinformed persons, to be a clever method of avoiding taxation. Under such circumstances, the forehanded prospective decedent incorporates his assets, divides the stock amongst those persons whom he desires to make his heirs, and the books of the corporation show the allocation of profits to the stockholders of record. Times without number the entire property and its income is by mutual consent under the complete direction and control of the thoughtful parent of the corporation, and no actual beneficial interest in the corpus of the property passes until his death. As to whether or not this proceeding evades payment of tax under averments that the transfers were bona fide inter vivos transfers, depends on the evidence which may be available to support the contentions of the opposed parties, to-wit: the State and the transferees. One has in mind that in many cases the State can only produce hostile witnesses, and the circumstantial evidence may be slight. So this trick, and it is a trick, has in many instances proved itself to be a successful but shabby method of evasion.

Division of Taxes

The United States Internal Revenue Act of 1926 provides that a credit may be claimed against an Estate Tax levied, up to 80 percent thereof, for any inheritance tax paid by an estate to any State, etc. This provision was enacted in an attempt to avoid double taxation and to equalize tax burdens. It is not within the scope of this article to go into the technicalities arising in connection with this question of the 80 percent credit. Suffice it to say, that, ordinarily, and ignoring the many exceptions and limitations, the State of California is entitled to an amount equal to 80 percent of any Federal Estate Tax levied in an estate under the jurisdiction of the California Courts. This does not, of course, mean that the Federal authorities fix a tax and then California gets 80 percent thereof. The California State tax, if any, is assessed according to the provisions of the State Inheritance Tax Act. With the large exemptions allowed in California, an estate of substantial valuation may, by ordinary computation, appear to be entirely relieved from payment to the State of an Inheritance Tax, and still may be subject to payment of a Federal Estate Tax. But if the State Inheritance tax be less than 80 percent of the Federal tax, the difference between the amount of inheritance tax and the said 80 percent of the Federal tax is payable to the State. This is payable out of the estate as any other expense of administration or debt. In no event is the total aggregate amount of State and Federal tax *increased*. It is simply a matter of division between the State and Federal Governments: 80 percent for California, and 20 percent for the Federal government.

Termination of Joint Tenancies

It has been the practice of Title Insurance Companies, those Courts of last resort in the matter of title to real property in this State, to issue policies of title insurance, showing title vested in a surviving joint tenant, upon affidavit of the surviving joint tenant and waiver of lien for inheritance tax from the office of the State Controller, the property being easily proved to be of less than taxable value considering the relationship of decedent to survivor. Section 1723 of C. C. P., as amended by the 1931 legislature, changes the little word 'may' to 'must' in the sentence which provides for the bringing of a Superior Court proceeding for the termination of joint tenancies, and the Title Companies now insist upon a Decree of Court before issuing a title insurance policy.

Powers of Appointment

In spite of doubt expressed as to the validity of Powers of Appointment in California, the fact remains that their validity is generally assumed in practice. According to the Inheritance Tax Act, when a power of appointment in a will or trust is exercised by a donee of such power, the property is taxed directly to the beneficiary indicated by the donee, as though it had belonged absolutely to the donee. It is not taxed in the estate of the donor of the power. Thus it would appear that when a beneficiary holds a power of appointment over property, in which he has a mere life estate, a tax may be assessed, (at the death of the donor of the power), only on the value of that life estate. Any tax as to those persons who benefit by the exercise of the power of appointment would presumably be suspended

(Continued on next page)

Legal Advertising Rates

REPORT OF COMMITTEE ON LEGAL ADVERTISING RATES

To Board of Trustees of
Los Angeles Bar Association:

The President of the Board of Directors of the Los Angeles Bar Association appointed

Harry J. McClean, Chairman
James H. Mitchell
Earle P. Thompson

a committee to investigate the subject of charges for legal advertising in Los Angeles County.

The committee conferred with representatives of legal publications in Los Angeles County and secured from them a comparative study of advertising rates here and in other important cities. We attach hereto such report as Exhibit "A."

We have also secured a comparative statement of rates charged in the several counties through the state. This chart is attached as Exhibit "B."

Confirmatory of oral statements made by representatives of the legal publications, we requested them to file with the committee such statements as they desired to make in the premises. Such statements were prepared and filed with your committee and are attached as Exhibit "C" and Exhibit "D."

Findings

The committee finds as follows:

I.

That the rates charged for legal advertising in Los Angeles County are not excessive whether compared to charges in other sections or whether considered as reasonable return on invested capital. We accept the statement of the publishers that present charges are necessary in the light of conditions revealed by their statements.

II.

That as appears from the evidence attached, the charges in Los Angeles County are lower than ninety-five per cent (95%) of the papers included in the comparative study herein referred to.

III.

That rates charged could be lowered ten per cent if the legal publications could operate on a cash basis.

IV.

That the total increase in advertising rates charged by the Los Angeles Daily Journal has averaged twenty-five per cent (25%) over a period of twenty-five years.

V.

That the principal complaint made against present rates arises in connection with the publication of summons. The committee finds, from a statement of the publishers, that the old rate charged for publication of summons resulted in an actual operating loss.

VI.

That the legal publications render service to the profession free of charge and consisting generally in publication of court calendars, court news and the maintenance of a service bureau, the cost of all of which must be absorbed by advertising charges.

VII.

That a minor attempt at the solution of the problem of advertising rates as it affects the client would be a reduction in the number of times of publication of the various notices now required to be published. The committee suggests that an appropriate committee of the Los Angeles Bar Association give consideration to this question in formulating a legislative program for the next session of the Legislature.

Conclusion

It is the conclusion of the committee that the subject of advertising rates for legal publication in Los Angeles does not now present a problem which should have further consideration by the Los Angeles Bar Association; that in the discretion of the Board of Trustees of the Los Angeles Bar Association, the matter of legislative changes in the matter of number of publications required be referred to the appropriate committee.

Respectfully submitted,
(signed) James H. Mitchell
(signed) Earle P. Thompson
(signed) Harry J. McClean, Chairman.

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until the death of the life tenant, and then fixed in *his* estate.

Compromise of Tax is Authorized

Subdivision 7 of Section 7 of the California Inheritance Tax Act may be observed with gratification. This amendment went into effect in 1929, and authorizes the State Controller to compromise with representatives of an estate all matters of taxation of deferred or contingent interests therein, and to settle and adjust them without waiting for the occurrence of the contingencies, etc. It is valuable for the estate representatives to make very sure of the advantages or disadvantages of compromise.

State Controller's Rules

Much procedure in connection with the assessment of inheritance taxes in California is governed by departmental rulings, formulated under the authority of the State Controller. These rules are followed in matters which are not specifically covered or defined by the Inheritance Tax Act. It is advantageous to know precisely what rules are applicable in a given case, since it is a fundamental principle of all taxation procedure that all doubtful questions be resolved, to the greatest extent possible under the law, in favor of the taxpayer.

The Criminal Statutes of 1931

By Charles W. Fricke, Judge of the Superior Court, Los Angeles County.

Scope of Article

This article does not include the amendments and new statutes forming a part of the Corporate Securities Act or the California Vehicle Act or those statutes having only an occasional or special application and is limited to a presentation to the legislative changes on criminal procedure of general interest and the substantive law of general importance.

Trend of Legislation

In the matter of procedure the trend is toward the promotion of greater efficiency and a more exact declaration of matters of procedure. The tendency in the matter of penalties has been in the direction of reducing the maximum penalties, limiting more closely the cases falling within the habitual criminal law and the laws relating to defendants previously convicted of felonies and reducing the classification of cases in which the courts are not permitted to grant probation. As to the substantive law legislation was adopted to meet new conditions which have arisen and to a correction and improved statement of offenses already defined.

Burglary With Explosives

Section 464 of the Penal Code is amended by removing the requirement that the entry be accompanied by a breaking, thus making the section uniform with other provisions relating to burglary which, in California, does not include the element of breaking which existed at common law and still exists in some states.

Tear Gas

The manufacture and sale of bombs, cartridges and weapons specially constructed to discharge tear gas induced the passage of Chapter 470. This provides a penalty of not more than two years in the state prison or a fine not exceeding $2,000 or both such fine and imprisonment, for the possession or transportation of any tear gas shell, cartridge or bomb, except by peace officers, military or naval forces for official use or by a person granted a permit or license from the superintendent of the division of criminal investigation of the state department of penology. The law also punishes the sale of these articles to any person not authorized to have the same in his possession.

Deadly Weapons Act

This chapter of the General Laws is amended by making it a felony for a narcotic addict to have in his possession any firearm having a barrel less than twelve inches in length, this provision being added to the former law making it a felony for an alien or ex-convict to have such a weapon in his possession. The law is also amended by changing the language "unnaturalized foreign born person" to "person not a citizen of the United States" as the former phrase might include a person who, though born in a foreign country, would still be an American citizen as, for example, a child born of American citizen parents while travelling abroad. The former language threatened the constitutionality of the provision. While the former statute prohibited probation upon conviction and made imprisonment in the state prison the sole penalty, the amendment permits a penalty of a maximum of one year in the county jail or a fine not exceeding $500, or both such fine and imprisonment as an alternative to the state prison penalty. As some of the violations of the law were hardly more than mere technical violations or of a minor degree of aggravation, this change in penalty is commendable.

Habitual Criminals

Section 644 of the Penal Code is amended to provide that a prior conviction of a defendant of a felony is not considered unless followed by imprisonment in a state or federal penitentiary. Under the former law a person who, for example, had been convicted of three felonies was, upon a fourth conviction, punishable by life imprisonment without possibility of parole even though one or more of the former convictions was of such a character that probation was granted.

The section is also amended by limiting the felonies, a former conviction of which is included in the computation of prior convictions to a limited number of named felonies which may generally be described as our most serious and vicious felonies.

Experience here and elsewhere has demonstrated that, even if we concede that the habitual criminal law, especially that portion thereof which imprisons the criminal, without hope of parole, for the remainder

of his life, is advisable, it should be made applicable to the type known as the dangerous criminal. There are more than a few offenses which are made felonies by statute which punish acts as mala prohibita rather than as mala in se, other offenses are felonies for a time and later are made misdemeanors only and there are some felonies which should not have been made more than misdemeanors. It is more than possible that, in our fervor to put down the so-called crime wave, we have gone beyond reasonable limits in some of our penal provisions. This is recognized in some of this year's amendments.

Conviction after Prior Conviction of Theft

Section 666 of the Penal Code formerly provided in effect that where a person had once been convicted of petit larceny and served a term of imprisonment therefor and was thereafter convicted of another petit larceny he was punishable by imprisonment in the state prison and, if his second offense was for an offense punishable upon a first conviction by imprisonment in the state prison, the penalty was increased by reason of the former conviction of petit larceny. This section was amended by substituting the word "theft" wherever the word "larceny" appeared. The effect is the same as though the word "larceny" were replaced by the words "larceny, embezzlement or obtaining property by false pretenses or any other act included in the definition of theft." As the appellate courts had already held that section 490a of the Penal Code had the effect of so amending section 666, the action of the legislature amounts to a legislative affirmance of judicial decision.

State Warrants

Section 818 formerly authorized only judges of the appellate, supreme and superior courts to issue warrants of arrest which may be served and executed in any county in the state without special authorization of some local justice. By amendment the authority to issue such warrants is conferred upon judges of the municipal court. The advantage of such a warrant is that it permits greater secrecy and efficiency, the instance being known where, under a warrant which had to be authorized for service in a county other than that in which it was issued, the authorization by a local justice was communicated to the defendant in time for him to flee, and the delay in securing such authorization worked to the advantage of the prospective prisoner.

Pleading in Inferior Courts

Section 1426 of the Penal Code is amended to provide that complaints in criminal cases in Municipal and other inferior courts shall measure up to the same standard of pleading as is required of an indictment or information in the superior court, the wording of section 1426 being, except for the use of the word "complaint," substantially the same as section 952 of the same code relating to superior court pleadings. This is a radical change. Heretofore a complaint was considered sufficient if it substantially "squinted" at charging the offense. When we bear in mind that, in the courts inferior to the municipal courts, there are judges who are not wholly familiar with the requirements of criminal pleading, we may expect a good crop of writs of habeas corpus attacking defective complaints after a conviction.

Bail

Section 1279 of the Penal Code is amended by adding a provision that where the surety is not worth the amount specified in the undertaking, exclusive of property exempt from execution, a hearing, at which witnesses may be called, must be held before the magistrate and, if the magistrate is satisfied that the equity is worth twice the amount of the bond the surety is justified.

Dismissal for Delay in Filing Information

Section 1382 is amended to provide that the prosecution shall be dismissed, unless good cause be shown to the contrary, unless the information is filed within fifteen days after the defendant has been held to answer. Prior to the amendment the time was thirty days, and, while another provision of the code required the information to be filed within fifteen days, no penalty followed unless the period were extended beyond thirty days. After all, fifteen days should be sufficient time to draft an information under the present simplified rules of pleading.

Speedy Trial of Misdemeanor Cases

Section 1382 has been amended to provide that prosecutions for misdemeanors in inferior courts shall be dismissed if the cause is not tried within thirty days, unless the cause is continued upon the application of the defendant. This provision is entirely new, the only law on the subject being a decision of the Supreme Court holding that such cases shall be dismissed if the defendant is not accorded a speedy trial, a ruling

which, since it fixed no specified limit of delay, left the condition of the law rather uncertain.

Charging Prior Convictions

The provisions of section 969a of the Penal Code providing that an indictment or information may be amended by adding a charge of prior conviction of a felony at any time prior to judgment and sentence remains as it was but the amendment entirely does away with the former provision to the effect that, after judgment and sentence, a supplementary information charging a prior conviction of a felony could be filed. The effect of this partial repeal seems to be that, unless the defendant is charged, prior to sentence, with a prior conviction, the various laws increasing a convicted defendant's burdens by reason of a prior felony conviction cannot apply.

Proof of Prior Conviction of Felony

A new section, 969b, is added to the Penal Code and provides that the records or certified records of any state penitentiary, reformatory or federal penitentiary in which a defendant has been imprisoned may be introduced in evidence and shall constitute prima facie evidence that the defendant has previously been convicted and served a term of imprisonment.

Temporary Release of Prisoner

Section 1600 of the Penal Code is amended to authorize the court before which the criminal proceedings are pending, and the superior court in cases in which the defendant has been convicted, to make a legal order authorizing the sheriff to take a prisoner out of jail in custody of a deputy sheriff. Heretofore there was no specific authority whereby a prisoner could be taken out of jail for necessary attendance upon personal business, medical or dental service or the attendance at the bedside of a loved one who was seriously ill or to attend a funeral of a member of his family, etc. Also it is clearly the law that, if the sheriff takes a prisoner out of jail without the lawful order of a court, such act constitutes an escape. Under the old law there was reason for the contention that, at least in some cases, the release of a prisoner to enable him to attend to any personal matter would constitute an escape.

Verdict in Absence of Defendant

Under section 1148 of the Penal Code as amended the court is authorized to receive a verdict in felony cases in the absence of the defendant whose attendance cannot be procured with due diligence. The amendment also provides that in misdemeanor cases a verdict may be received in the defendant's absence. The amendment is the result of the experience of a defendant taking French leave while a jury was out deliberating.

Sentences in Absence of Defendant

Section 1193 of the Penal Code is amended to permit judgment and sentence in the absence of a defendant whose presence cannot be secured with due diligence and the court finds that such proceeding in the absence of the defendant will be in the interests of justice. The amendment also authorizes judgment and sentence in misdemeanor cases in the absence of defendant in all cases.

Punishment for Attempts

Section 664 which provided for the punishment of all attempts to commit crime except the attempt to commit first degree burglary has been amended to include that offense in its provisions. Prior to this amendment the effect of its omission created the rather unique situation of making the crime of attempt to commit first degree burglary punishable not under the indeterminate sentence law but by a sentence of a specific term of years by the trial court, with the authorized penalty any term of years.

Installment Payment of Fines

Sections 1205 and 1446 of the Penal Code relating to the payment of fines is amended to authorize the court to direct that the fine be paid within a limited time or in installments payable in specified amounts on specified dates.

Concurrent and Consecutive Sentences

The amendment of section 669 of the Penal Code removes the provisions that sentences for two or more offenses shall run consecutively unless the court should order otherwise and requires that the court in each such case specifiy whether the sentences shall run concurrently or consecutively. This amendment is well advised as it not infrequently happened that the trial court overlooked the necessity of ordering sentences to run concurrently though not intending that they run consecutively.

Indeterminate Sentence Law

Section 1168 has again undergone its biennial amendment. Provision is now made that, if a convict violates prison rules or

escapes while working outside of the prison, the board of prison directors may revoke their former order fixing the term of imprisonment and fix any term not exceeding the maximum provided by law. This, however, can only be done after a hearing and adjudication by the board, the prisoner being entitled to be present and to testify and present evidence. It is expected that this provision will have a tendency to encourage compliance with prison rules and regulations.

The section is also amended by making five years the minimum term of a defendant convicted of a felony after a prior conviction of a felony or of a person convicted of a felony who was armed with a deadly weapon at the time of the commission of the crime or carried a concealed deadly weapon at the time of his arrest. Where both factors, conviction of a prior felony and such possession of a weapon, exist, the minimum term is fixed at ten years. This is a reduction from minimum terms of seven and fifteen years respectively under the former law.

The law is also amended to provide that "in any case the matter of parole may be determined by the board at any time after the expiration of six months" from the commencement of the imprisonment. While this does not mean that any prisoner may be released on parole after he has served six months, it does permit the determination of the time of parole at the end of such time. As six months is an extremely short time to learn enough about a prisoner to determine when he shall be paroled, it is hoped that the board will be slow to use this privilege.

Similar provisions are removed from section 1168 and placed in two new sections of the Penal Code, numbered 18 and 18a, which provide that where no other provision is made by law the minimum penalty for any felony shall be six months and the maximum shall be five years in the state prison. Former similar provisions applied only to felonies included in the Penal Code.

Probation

Section 1203 of the Penal Code is amended. The former law provided that probation could not be granted in any case in which the defendant was armed with a deadly weapon at the time of the crime or was armed with such a weapon concealed on his person at the time of the arrest. This is now modified by limiting this prohibition to cases of robbery, burglary, forcible rape, arson, murder, assaults with intent to commit murder and attempt to commit murder, grand theft, train wrecking, receiving stolen property, assault with a deadly weapon, kidnaping, mayhem, escape from state prison and the crime of conspiracy to commit any of the foregoing offenses.

Prison Terms and Paroles

Chapter 487 creates, in the state department of penology, a division of prison terms and paroles consisting of three members appointed by the governor. The chairman of this division is to receive an annual salary of $6,000 and each of the other members will receive an annual salary of $5,000 and the members are also allowed necessary travelling expenses and may employ and fix salaries of a secretary and other employees. This division takes over the duties of fixing the length of the term of imprisonment under the indeterminate sentence law and the duty of passing upon applications for parole, duties heretofore vested in the state board of prison directors. It is believed that the substitution of an adequately paid board charged with these important duties will result in an improved administration of the subject of imprisonment and parole.

Coroner's Inquests

Coroner's inquests hereafter can be held only in those cases in which "after an investigation by the coroner the circumstances warrant such action. There is some doubt as to the wisdom of this provision. While it is certainly advisable that an inquest be held only in cases which warrant the expense of such procedure, it is doubtful whether it is wise to permit the coroner who is not required to be a member of the bar and who may have little knowledge of the law to have vested in him the determination whether an inquest shall be held, a condition which may become aggravated should a difference of opinion arise between the coroner and a district attorney who feels that an inquest should be held.

Conclusion

It should be a source of gratification to the Los Angeles Bar Association that a large proportion of the improvements in the criminal law by the last legislature either originated with or were supported by this association. Those recommendations of the Committee on Criminal Law and Procedure which met the approval of the Trustees were drafted in bill form by the committee and the association secured their introduction by local members of the legislature.

Place The Blame Where It Belongs

OBSTRUCTIONS TO SUCCESSFUL PROSECUTIONS OF CRIMINAL OFFENDERS CREATED BY LEGISLATORS, NOT BY LAWYERS OR COURTS. REMEDIES SUGGESTED

By George B. Webster, of the Los Angeles Bar

When Jack Cade started his revolution in England many years ago, one of the principal planks in his platform was "let's kill all the lawyers." In his uneducated mind they constituted the barrier that stood between him and the accomplishment of his ulterior purposes, and the judges who pronounced upon offenders the penalties of evil doing being also lawyers, they too fell under the ban of his displeasure and were included in his sanguinary suggestion. Many times since the speedy and (to him) unfortunate termination of Cade's insurrection, but for entirely different reasons, his demand for the extermination of lawyers has found repetition, although the manner suggested for their elimination from the body politic was not so drastic nor so final. Like him, they who repeat it take cognizance of only one fact and see only one result. Pursuing the line of causation no further than did he, they aim all their shafts at the first figure which comes into sight on the backward trail from effect to cause, and their error varies in ratio to their increasing zeal.

Unthinking Condemnation

When a notorious criminal is discharged because of a fatal error in the indictment upon which he was arraigned, the judge who releases him shares with the lawyer who defends him the condemnation of the critical but unthinking community, although the one merely follows the law which he is sworn to administer fairly and impartially and the other but performs the duty which his employment lays upon him. No one thinks of denouncing the legislators who enacted the requirement that the indictment should be in a certain form or failed to provide statutory declaration to the effect that certain omissions should not render it void. So, too, when a jury acquits a defendant in the face of evidence fully establishing guilt it is the trial judge and the prosecuting attorney, and not the members of the jury panel, upon whom the opprobrium falls, although the jurors are the sole arbiters of all questions of fact. The critical public, and sometimes the press, seem to think that the judge and the prosecutor should have invaded the exclusive province of the jury and coerced a verdict of guilty, or done something, generally undefined, to bring about that result. They do not stop to think that if the exclusive fact finding prerogative of the jury is to be invaded it is the legislatures that must act, not the courts nor the lawyers. Possibly all this is due to the laity's lack of knowledge of the foundation of our law and the manner in which we acquired it. If so, perhaps some consideration of the origin and development of our jurisprudence might result in rendering criticism more constructive and helpful.

The Common Law

When our original colonies took leave of the parent country and established an independent government some fundamental law was necessary. There was no time for the preparation and adoption of another comprehensive code of law such as the Code Napoleon or the Justinian Code, so as basic law there was adopted the common law of England as it existed in the fourth year of the reign of James I, which was to prevail as the rule of decision in all cases until otherwise provided by legislative enactment. The same fundamental law was adopted by many of the new states as they were admitted into the Union, and thus the English common law came to be controlling in all cases where nothing to the contrary of it has been provided by legislation. In the absence of such, its rules are as binding on our courts as any statute enacted by a legislative body can be. If a case arise and come to a court for decision, it must today be disposed of according to the common law unless the legislature has laid down some modification of it. In that ancient unwritten body of law a particular crime had certain distinguishing elements in the absence of which no act however wrongful or injurious could constitute that crime, and before conviction could be obtained, proof of these essential facts was necessary. When we adopted this common law we took with it all the rules and decisions pertaining to it

which were then in existence, so that today, in order to convict one of a crime, where there has been no amendment of the common law, the indictment must allege and the prosecutor must prove every essential element of the particular offense as it was known to that unwritten, but none the less certain, jurisprudence.

Legislature Should Act

But this necessity is not the fault of the lawyers or the courts. At any session of the legislature a law could have been passed amending or entirely avoiding that rule. Some states (California among them) have done so in respect of some particular crimes and have legislated out of existence the seemingly senseless jumble of words in which the criminal indictment must otherwise be worded and in place of it have substituted a concise statement of the acts charged to have been committed by the defendant, thus closing up what was both a pitfall for the prosecuting attorney and an avenue of escape for the defendant. All the other states might through their legislatures do the same. If they choose not to do it, the judges and the lawyers must remain bound by the requirements of the old common law and be governed in their proceedings accordingly. Thus, when a defendant, guilty beyond doubt, is relieved of his conviction by a reviewing court because the word "the" is omitted from an indictment, it happens, not because his lawyer makes use of a technicality to thwart justice, but because the people themselves ordained in the constitution which they adopted as their organic law that every indictment for a criminal offense shall contain that word in the place from which it was so omitted.

Bound by Common Law

Again, when a man placed on trial for an offense against one of the other sex, commonly and erroneously designated in the public prints as "a statutory crime," is discharged from custody because there was no proof that in his misconduct, reprehensible as it was, he made use of overwhelming force, the miscarriage of justice results not from the favor of the trial judge, nor the contrivances of his attorney, nor yet the incompetence of the prosecutor, but solely from the fact that at common law the use of force in the assault in such a case was an essential element of the crime, which rule the legislature has not seen fit to change. If an individual solicit or demand money for influencing the official action of a public officer the fact that he cannot be convicted of bribery is not the fault of judges or lawyers, but rather that of the lawmaking body of the state. Not so long ago in a midwest state, a legislator charged with soliciting a price for his vote on a pending measure was necessarily discharged because no one accepted his terms or even promised to consider him. His evil purpose was as apparent as his unfitness for public office, but a willingness to commit an offense, or even a desire to do so (barring some cases of conspiracy) was not a crime at common law and has not been made such by statute in that state. Still this unfaithful public servant was as deserving of punishment as if he had succeeded in selling his vote. In public discussion and in some newspapers, the judges who were thus forced to relieve him of prosecution were roundly denounced for their decision and his attorneys were accused of defeating justice by the use of technicalities.

Criticism Due to Ignorance

In each one of these cases the criticism or condemnation was due to ignorance of the proximate cause of the trouble. Probably none of those who voiced them intended to do injustice to lawyers or judges but the harm was nevertheless done, not only to the profession, but to the cause of justice itself. Every word, every act, which provokes or encourages disrespect for the courts, or their procedure, or for the methods of their ministers, strikes beyond them and sinks into that upon which the safety of our government rests. If the criminal element of any community be given reason to believe that the consequences of crime may be avoided with ease through unscrupulous contrivances of lawyers or "hair-splitting" refinements of judicial reasoning, more crime will result, for the deterring effect of prompt and fitting punishment is not doubted by any one of experience in the criminal courts.

Remove the Obstructions

Why, then, should not the blame be placed in the public mind where it belongs, and the remedy sought where the cause really lies? Instead of "crime surveys" and commissions for the restriction of crime and the like, let us have an association for the procurement of legislative action—such action as will remove the obstructions in the way of successful prosecution of criminal of-

fenders and permit the exercise of judicial functions in the light of modern conditions rather than in the shadow of the ancient common law. Happily the day has passed when it was necessary for the protection of the vassal aaginst the overlord that criminal prosecutions should be hedged about with restrictions which operate to give the accused a threefold advantage over the prosecuting authority. When the necessity ceased, so also should have ceased those restrictive rules, but, generally speaking, they are still in full force and effect.

Legislators are usually quite sensitive to public opinion, if it be expressed strongly enough to convince them that it is entertained by a voting majority of their constituents, as even the casual observer must know from the antics and utterances of some members of our Congress. Given strong and aggressive leadership backed by support of the representative press a public opinion not easily to be ignored could soon be created, and through it might be accomplished the reforms apparently necessary to remedy the existing conditions. To be sure, the lawyers and the judges should, as undoubtedly the mass of them would, give such a movement encouragement and support. The mere fact that some among them might decry such an effort should not make it an idle one, nor should their obstructive activities be charged against the whole body of a profession which faithfully keeps more confidences and performs with fidelity more trusts than any other class. Like other flocks it has its share of black sheep, but the color of their wool should not taint the others, who serve a generally unappreciative public faithfully and to good effect. What profession is without its unworthy ones? Is there not the quack doctor fattening his purse through the credulity of victims of imaginary diseases, and even among the clergy is there not from time to time some wearer of the cloth guilty of offense against the laws of both God and man?

It will not be otherwise as long as weakness and greed are elements of human character and as long as a complaisant public neglects its ever present opportunities. But if that public wishes to remedy the evils which apparently it thinks surround our system of administering criminal justice and to eliminate the so-called "technicalities" from the grasp of criminal defendants and their lawyers, let it demand and require legislative action to sweep aside the antiquated proceedure in which that gentry finds its refuge. Then, perhaps, it will be possible, with reasonable certainty, to convict a defendant undoubtedly guilty of the crime for which he is arraigned, and to dispense with the necessity of informing a murderer in the formal charge against him that after his deadly assault the victim of his lethal purpose "languished, and languishing lingered" until a day certain "whereupon he died."

IMPORTANT CORRECTION

In the December issue of THE BULLETIN there was printed the report of the Committee on the 1931 Election of Municipal Court Judges, commencing on page 123 of that issue. On page 124, under the heading "Drafting Candidates," occurred an important typographical error. The text of the report at that point is incorrectly made to read: "In the last election of Municipal Judges there was no endorsement by the members of any of the candidates for office."

The text should read as follows:

"In the last election of Municipal Judges there was no endorsement by the members of any of the candidates for Office V."

Judicial Candidates and Campaigns

BAR COMMITTEE PROPOSES NEW METHOD FOR OBTAINING THE JUDGMENT OF THE BAR UPON JUDICIAL CANDIDATES PRIOR TO THE PLEBISCITE. AMENDMENT TO BY-LAWS OF BAR ASSOCIATION TO BE VOTED UPON AT MEETING OF MEMBERS JANUARY 28TH

TO THE PRESIDENT AND BOARD
OF TRUSTEES OF THE
LOS ANGELES BAR ASSOCIATION:

Gentlemen:

In the Fall of 1930 the President appointed the undersigned as a committee to examine into the methods used here and elsewhere for obtaining the judgment of the members of the Bar upon judicial candidates, publicizing the result of the determination, and conducting campaigns in favor of candidates who are approved by the Bar. Your Committee has held many meetings, has obtained and examined reports and data as to methods used here and elsewhere, and has reached the following conclusions:

1. The method heretofore used by the Association pursuant to present Article IX of the By-Laws has not been satisfactory. This seems to be the concensus of opinion of the Bar.

2. Under the present method, with a bar of the numerical size of that of Los Angeles County and with the large number of candidates who present themselves, many of the lawyers who vote upon the candidates have been, at the time of the plebiscite, without adequate information respecting the candidates' qualifications.

3. A method must be devised which will enable the Association to collect accurate data respecting such candidate and transmit such data to the members prior to the plebiscite.

4. The best means to secure the necessary information seems to be to obtain carefully and with certainty the collective judgment of all those members of the bar who know the qualifications of the respective candidates and give to the entire Bar the advantage of that judgment, before it finally votes upon the candidates.

5. One method of obtaining the facts regarding the candidates might be to delegate to a proper committee the duty of obtaining the information, using such sources as may be open to it. Such method is, however, open to the objections that the Committee could not possibly obtain all the available information unless it had access to the knowledge of all members of the bar, and that its independent determination in some instances might be based upon incomplete information.

Committee of Fifteen Proposed

6. To avoid the criticism just suggested, it seems best that a standing committee of lawyers of recognized standing, highmindedness and judgment be created which shall have entire charge of conducting the plebiscite and securing from the entire bar the information which the lawyers should have before voting upon the candidates; that this Committee should be composed of fifteen members selected five for two years, five for four years, and five for six years, with biennial appointments of five each year thereafter; that this Committee should be appointed by a board in whom all may have confidence and to that end it should be created and its vacancies filled by an appointing board composed of the president of the Association, the ten past presidents next in order who reside and practice in Los Angeles, and the presidents of all of the affiliated associations.

7. The Committee, to be known as the Committee on Judicial Candidates and Campaigns, should first obtain from each candidate a statement of his educational qualifications and legal experience, secured in response to a proper questionnaire; the questionnaire should call for an expression from the candidate as to whether he will submit his candidacy to the plebiscite; the Committee should, when it deems necessary, check the correctness of the answers obtained; the Committee from the answers so obtained and checked should prepare a statement as to the candidates' educational qualifications and legal experience and transmit this to every lawyer who is a member of the Association or any of its affiliated associations and with such statement transmit a searching questionnaire designed to enable each lawyer accurately to express his knowledge of the qualifications of each candidate whether or not the candidate supply the biographical information referred to or submit his candidacy to the plebiscite; to the end that the fullest expression may be obtained the questionnaire should contain a space for each lawyer to supply pertinent information not specifically called for by the questionnaire; the Committee should cause the answers to the questionnaires to be tabulated by a reputable firm of public accountants, should then consider such tabulations, the questionnaires and the information shown, and

therefrom prepare a statement showing as to each candidate the result of the questionnaire and the recommendation of the Committee based upon the result of the questionnaire; the Committee should transmit such statement to each lawyer who is a member of the Association or an affiliated Association, together with a ballot calling for the vote of each such lawyer as to which candidate should be supported by the Association, such ballot calling for a vote upon one candidate for each office to be filled.

8. The name of any candidate who refuses to answer the questionnaire supplying the biographical information, or to submit his candidacy to the plebiscite, should not go upon the plebiscite ballot, but, if the candidate be found by the Committee not qualified, that fact should be shown upon the statement accompanying the questionnaire, the name of the candidate being included in the questionnaire. If the response to the questionnaire shows the candidate not qualified, that fact should be shown in the statement accompanying the ballot even though the name of the candidate does not appear upon the ballot. Thus a qualified candidate will be encouraged to submit his candidacy. Upon unqualified candidates, the public will have the benefit of the committee's conclusions, and the benefit of the conclusions of the bar as expressed in its questionnaire.

9. Each questionnaire and each ballot returned should be so sent and returned as to be a secret ballot and the answers returned should be kept in the strictest confidence by the Committee, to the end that all lawyers may be free to express their frank judgment as to each candidate.

10. The plebiscite ballots returned should be counted by the Committee, the results made public, and an active campaign be conducted by the Association in behalf of those candidates who receive the highest vote at the plebiscite for the office for which they respectively are candidates.

The Cleveland Method

11. Under the method used in Cleveland a candidate is required to pledge himself that neither he nor any committee will solicit or receive funds in behalf of his candidacy, that he will abide by the result of the bar poll, will not conduct an individual campaign nor permit individual campaigns to be organized in his behalf. No candidate may be supported who does not make these pledges and the Committee is directed to withdraw its support from any candidate who, having made a pledge, violates it. **Such course of action seems highly desirable and the Committee of the Los Angeles Bar Association ultimately should have the power to exact the pledge and act upon it and upon its violations. When the confidence of the bar and of the public in the correctness of the bar's recommendation has been demonstrated by experience here, the course suggested should, by amendment to the By-Laws, be provided. Until that time it seems fairer to the public and to the candidates not to require the suggested pledge.**

The method outlined should result in a frank and full expression through the questionnaire as to each candidate, by all members of the bar having knowledge of the candidate's qualifications. The remarks returned upon or accompanying the questionnaire would be of great value to the Committee in determining its recommendations and should, where necessary, be checked by the Committee as to correctness.

The plebiscite so conducted should result in a democratic expression by all lawyers of the Association and its affiliated associations as to the candidates best qualified for the offices to be filled, based upon actual knowledge.

The method suggested is substantially like the method now used by the Cleveland Bar Association. It operates there with excellent results and is highly approved by the Cleveland Bar and in various articles by lawyers and other authorities upon such questions in articles and addresses upon the subject.

It so happens that a Committee of the Los Angeles Bar Association which conducted the plebiscite prior to the last Municipal Court election concluded that the method then used was highly unsatisfactory, of its own motion made an examination into the Cleveland system, and has presented to the president and board of trustees a report recommending the Cleveland method. This committee was composed of: Ewell D. Moore, Chairman, Frank B. Belcher, Isaac Pacht, Clyde R. Burr and J. W. Sutphen. (After his appointment to Superior Bench, Judge Pacht took no part in the activities of the Committee.). Your Committee feels fortified in its conclusions by this report of this other committee.

Proposed Amendment to By-Laws

To enable the suggested plan, if approved by the bar, to be put into effect, your committee submits herewith a proposed amendment to Article IX of the By-Laws. For the passage of this amendment and pursuant to Article X of the By-Laws the proposed amendment must be approved at a meeting of the Association by a 2/3 vote of all members present and voting and the amendment with notice that it will be presented for adoption at the meeting must be mailed to all active members of the Association at least five days before the date of said meeting. The presentation herewith, we take it, fulfills the requirement of presentation to the board of trustees. The Committee begs to suggest that the amendment should have full consideration by the Bar and to that end should be published together with the committee's report or a proper statement respecting the amendment, in an issue of the Bar Bulletin published some time before the meeting at which the amendment is presented.

Respectfully submitted,
Joseph L. Lewinson
W. H. Anderson
H. T. Morrow
Byron C. Hanna
John Perry Wood, Chairman.

Proposed Amendment of By-Laws of the Los Angeles Bar Association

PROVIDING FOR STANDING COMMITTEE ON JUDICIAL CANDIDATES AND NEW METHODS OF TAKING PLEBISCITE AND CONDUCTING CAMPAIGNS. TO BE VOTED UPON AT MEETING OF MEMBERS ON JANUARY 28

In 1930 the President of the Los Angeles Bar Association appointed a committee of five to examine into the methods used here and elsewhere for obtaining the judgment of members of the Bar upon judicial candidates, and conducting bar campaigns in favor of those who are approved by the Bar.

The Committee has submitted its proposed amendment to the By-Laws, which is printed below, the consideration of which has been made the special order of business at the meeting of members to be held at the Alexandria Hotel on January 28, at 6:30 p.m. A statement of the Committee submitting its proposed amendment will be found upon the pages preceding the amendment printed below.

ARTICLE IX

Concerning Judicial Candidates and Election

Section 1. A standing Committee on Judical Candidates and Campaigns shall be created. It shall be composed of fifteen representative lawyers of recognized standing, judgment and independence; one-third to be appointed for two years, one-third for four years, and one-third for six years. The Committee shall be kept filled by biennial appointment of five. All vacancies shall be filled as they occur. The Committee shall be appointed and all vacancies therein shall be filled by an Appointing Board composed of the president of the Association, the ten past presidents next in order who reside and practice law in the County of Los Angeles, and the presidents of the Affiliated Associations as defined by Article VI of the By-Laws. The Appointing Board shall meet at the call of the president, or of any three members.

The committee shall have the following powers and duties:

(1) To inform itself of prospective candidates, and the qualification of candidates, for the Superior Court of Los Angeles County, and the Municipal Court of the City of Los Angeles.

(2) To induce lawyers qualified for these judicial offices to become candidates therefor;

(3) As soon as the list of candidates for any election for any of the judicial offices mentioned shall have been determined by the filing of petitions or otherwise as the law may require, then;

(a) To request from each candidate a biographical statement and a statement whether he will submit his candidacy to a plebiscite to be taken by the Los Angeles Bar Association. Such statements shall be in response to a questionnaire substantially in the form shown by Exhibit "A" to this Article IX.

(b) To verify, where in its judgment such verification is desirable, the statement of the candidate.

(c) To transmit to each member of the Los Angeles Bar Association the substance of the said statement, with, if the facts do not tally with the candidate's statement, a statement of the facts found upon verification. If the candidate fails to furnish the biographical statement or to submit his candidacy to the plebiscite, the Committee shall ascertain the facts as to his biography and qualifications and if the candidate be found by the Committee not qualified for the office, report such facts and findings in said statement.

(d) With such statement to transmit a questionnaire as to every candidate, substantially in the form shown on Exhibit "B" to this Article IX, including a letter of transmittal substantially in the form of Exhibit "C" thereto.

(e) To cause the answers to the question-

naires to be tabulated by a reputable firm of public accountants, to consider such tabulation, the questionnaires and the comments appearing on the questionnaires or in accompanying letters, and from them make up a statement of the qualifications of each candidate showing the reasons therefor in brief or in extenso as the Committee may determine, and determine which candidates should be recommended and which candidates should not be recommended. If any candidate has declined to submit himself to the plebiscite or to submit his biographical information, that fact shall be stated and he shall not be recommended by the Committee and his name shall not appear on the ballot —but if the candidate be found not qualified for the office the Committee in its discretion may so report in its statement—in its discretion setting forth the basis therefor in brief or in extenso.

(f) To transmit to each member of the Los Angeles Bar Association said statement of the candidate's qualifications together with the recommendations of the Committee, showing also the total number of questionnaires answered and that the facts and recommendations are based upon the answers to and remarks upon the questionnaires.

(g) With such statement and information to transmit a ballot for voting upon one candidate for each office to be filled.

(h) To count the ballots and report the result to the Board of Trustees and make the result public.

(4) To cause an active and widespread campaign in behalf of the candidates who receive the highest vote at the plebiscite for the offices for which they respectively are candidates; to take complete charge of the raising of money to conduct such campaign; and for such purposes at its discretion to appoint sub-committees of its own members or partly of its own members and partly of other lawyers and/or laymen.

Section 2. Whenever by this Article IX provision is made for transmission to the members of the Association of statements, questionnaires, ballots or other papers connected with the subject matter of this article, such statements, questionnaires or ballots shall be transmitted similarly to the members of each affiliated Bar Association who are not members of this Association, and the statements, questionnaires and ballots of such members of said affiliated associations shall be received, canvassed, tabulated and acted upon in like manner as those received from members of this Association, to the end that the plebiscite provided for by this Article may be the plebiscite of all lawyers who are members of this Association and/or of all other bar associations in the County of Los Angeles which are affiliated with this Association; provided always that the provisions of this Section 2 shall not apply in connection with any plebiscite as to the candidates for office of judge of the Municipal Court of the City of Los Angeles.

Section 3. If directed by the Board of Trustees so to do, the Committee shall have and perform, in respect of the election particularly designated by said Board, the same powers and duties in respect of candidates for and election to the office of judge of the District Court of Appeals for the district in which Los Angeles is situated, and/or judge of the Supreme Court, herein given to the Committee in respect of candidates for and election to the office of judge of the Superior Court for Los Angeles County.

Proposed Form of Questionnaire for Candidates

EXHIBIT "A"

To ....., candidate for ..... Court:

To enable the Committee on Judicial Candidates and Campaigns of the Los Angeles Bar Association to prepare its statement to accompany the questionnaire provided by the By-Laws for transmission to the members of the Association and affiliated associations, kindly answer the following questions, sign the questionnaire and return it to the Committee, using the enclosed envelope, not later than .....

.....

If the questionnaire is not answered fully or if the candidate does not answer question 10 in the affirmative, his name will not appear on the plebiscite ballot and he cannot be recommended. However, it will be the duty of the Committee to ascertain the facts as to the candidate's biography and qualifications, and if the candidate be found not qualified, to report such fact in its statement to the bar accompanying the questionnaire. At all events the name of each candidate will be submitted in the questionnaire. If therefrom the candidate be found not qualified that fact will be reported in the statement sent out with the plebiscite ballot, although such candidate's name will not appear on the ballot. It is desirable, therefore, that each qualified candidate submit his candidacy to the plebiscite and respond fully to the questionnaire.

(1) Name and office address.
(2) When and where born.
(3) From what schools graduated with the place, year and number of years attended:
  (a) High school.
  (b) Other preparatory schools.
  (c) College.
  (d) Law school.
  (e) Other education.
(4) When and where admitted to the Bar?
(5) When admitted to practice in California?
(6) The places of practice and the number of years of practice in each place.
(7) Number of years and character of active trial experience and where?
(8) Judicial experience, if any, giving court and period of service.
(9) Other public office held, where and how long?
(10) Will you submit your candidacy to the plebiscite to be taken by the Los Angeles Bar Association?

EXHIBIT "B"

(Form of Letter for Attachment to Questionnaire)

(HEADING OF LOS ANGELES BAR ASSOCIATION WITH NAMES OF COMMITTEE ON JUDICIAL CANDIDATES AND CAMPAIGNS)

Los Angeles, California.
....., 19....

To the Members of the
Los Angeles Bar Association.

This letter deserves your careful and immediate attention.

Attached is a questionnaire submitted to all lawyers who are members of the Los Angeles Bar Association, or its affiliated associations, for the frank expression of their views as to the qualifications of all candidates for judge of ..... Court. Your answers are for the confidential guidance of the Committee on Judicial Candidates and Campaigns which will, on the basis of the answers to the questionnaire, including the comments thereon or accompanying them, recommend to the members of the Los Angeles Bar Association the candidates who in the judgment of the Committee, are qualified for the judicial offices they seek. In order to obtain a full and satisfactory judgment in this regard, it is necessary that all members return the questionnaire properly answered. Lawyers are urged to state any facts known to them bearing upon the candidates' qualifications.

The recommendation will be submitted to you in connection with the usual Bar poll, which will be held shortly. The purpose of the questionnaire is to procure as much accuracy as possible in the judgment of our Association and its affiliated associations on the qualifications of candidates to the end that a more vigorous judgment may be expressed and a sharper cleavage defined between the qualified and the unqualified.

Please return the questionnaire not later than ..... **Separate comment on the individual candidates may be written on or enclosed with the questionnaire.**

Please sign your name on the envelope with space provided for signature. In it enclose the other envelope with the questionnaire sealed in the inside envelope. Any member may sign the questionnaire if he desire. It is not necessary that he do so. Unless the questionnaire be signed it will be impossible even for a member of the committee to know who returned it. Whether signed or not all the questionnaires returned are guarded by absolute secrecy.

Very truly yours,

.....
Chairman of the Committee

and .....
Secretary of the Committee.

Proposed Form of Questionnaire for Members of the Bar Association

EXHIBIT "C"

(Questionnaire must be in the hands of the Committee not later than.....at.....m.)

QUESTIONNAIRE CONCERNING CANDIDATES FOR NOMINATION FOR JUDGES OF THE ..... COURT AT THE ELECTION OF NOVEMBER ....., 19.....

Special information and comments concerning any of the candidates may be noted on the back hereof or by separate enclosure. Such information and comments and the answers to this questionnaire are for the confidential information of the Committee in determining its recommendations for the later plebiscite and will not be disclosed to others. Members are not required to sign the questionnaire, but may if they desire.

The following questions are submitted as to each candidate who has not held judicial office.	CANDIDATES WHO HAVE NOT HELD JUDICIAL OFFICE					
	John Doe		Jim Roe		James Coe	
	Yes	No	Yes	No	Yes	No
1. Have you had personal contact with him professionally or socially?						
2. Does he possess adequate legal ability?						
3. Has he a judicial temperament?						
4. Will he be diligent in the dispatch of business?						
5. Is he disposed to work hard?						
6. Has he executive capacity?						
7. Has he a sense of civic responsibility?						
8. Has he had adequate experience in the trial of lawsuits?						
9. Is his reputation at the Bar good?						
10. Has he the integrity to be a good judge?						
11. Has he the capacity to be a good judge?						

The following questions are submitted as to each candidate who has held judicial office:	CANDIDATES WHO HAVE HELD JUDICIAL OFFICE IN CALIFORNIA					
	John Doe		Jim Roe		James Coe	
	Yes	No	Yes	No	Yes	No
1. Have you appeared in his court?						
2. Does he open court promptly?						
3. Does he remain on the bench until 5 o'clock if a case is in his court in course of trial?						
4. Is he diligent in the dispatch of business?						
5. Is he disposed to work hard?						
6. Is he courteous?						
7. Is he attentive and fairminded?						
8. Does he possess adequate legal ability?						
9. Has he executive capacity?						
10. Have you confidence in his judicial integrity?						
11. Has he a sense of civic responsibility?						
12. Do you regard him as an able judge?						

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